



CITY OF YAKIMA
REQUEST FOR PROPOSAL
NUMBER 11319-P

To Provide

***Debt Collection Services for Various City
Departments***

**Located at: 129 No. 2nd St.
YAKIMA, WASHINGTON 98901**

**Instructions to Proposers, Proposal Forms,
Business Questionnaire, Agreement,
And Other Proposal Documents**

May 18, 2013

NOTICE TO PROPOSERS

RFP NO. 11319-P

Notice is hereby given by the undersigned that sealed proposals will be accepted in the office of the Yakima City Clerk, Yakima City Hall, 129 No. 2nd Street, Yakima, Washington, 98901 until the hour of 2:00 p.m., May 30, 2013, for:

**Debt Collection Services to collect debts owed to the City Utility Account
Office, Animal Control and Parking Enforcement, Treasury, Central
Accounts, Finance Department, Code Administration, Parks and Recreation,
and Transit.**

A pre-proposal conference will be held at 2:00 PM on May 22, 2013 in the 2nd Floor Conference Room, located at Yakima City Hall, 129 North 2nd Street, Yakima, WA 98901. Attendance is not mandatory; however, Proposers are STRONGLY urged to attend.

Proposal forms and specifications are available in the office of the Purchasing Manager, City Hall, Yakima, Washington. 509-575-6093.

This advertisement does not constitute any offer on the part of the City; rather it is placed only in order to solicit proposals. Minority Contractors are encouraged to submit a proposal. The City of Yakima reserves the right to reject any and all proposals.

Dated this 18th day of May, 2013.

(Seal)

Colleen Bailey, CPPB
Buyer II

Publish on May 18th and 19th, 2013

Account No. 12959

PROPOSAL NO. 11319-P
Debt Collection Services
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REQUEST FOR PROPOSAL NO. 11319-P
Debt Collection Services

A. PROPOSAL CONDITIONS

1. General Information

The City of Yakima is soliciting proposals from professional debt collection service agencies, hereinafter referred to as proposer, to provide debt collection agency services under contract with the City of Yakima, hereinafter referred to as “City” to facilitate payments on delinquent accounts owed to the City from the Utility Services Office, Animal Control, Parking Enforcement, Treasury, Central Accounts, Finance Department, Code Administration, Parks and Recreation, and Transit.

2. Reservation

2.1. Proposals shall remain open for acceptance and be irrevocable for a period of ninety (90) calendar days from the proposal opening date. The City reserves the right to reject any or all proposals and to award the contract in its entirety, or in part, whichever in its opinion best services the interests of the City. The City will review the overall qualifications and business proposals of the Proposers and, in its judgment, select the best qualified and most responsive Proposer. After submission of a proposal, and before acceptance of any proposal by the City, the City may request, and Proposer shall furnish, such additional information related to the Proposer as the City may reasonably request.

2.2. The City reserves the right to award the contract to the applicant that it deems to offer the best overall qualifications/proposal in its sole discretion. The City reserves the right to revise the RFP schedule, to revise the RFP and/or to issue amendments to the RFP. The City also reserves the right to cancel or to reissue the RFP in whole or in part prior to the execution of a contract. The City also reserves the right to refrain from contracting with any and all applicants. The release of the RFP does not compel the City to enter into any contract pursuant to the RFP.

3. Award of Contract

3.1. After receipt and review of the proposals, the City reserves the right to interview and ask additional questions. The City reserves the right to negotiate, amend, or change the final contract through a bilateral “contract modification” at any time.

3.2. In the event that the successful Proposer does not execute the contract as herein required, the award of the contract may then be made to another Proposer or the City may decide to call for new proposals.

3.3. See Exhibit “E” Agreement – Any exceptions to the proposed agreement or specification requirements shall be equal to or better than the specifications stated herein and all exceptions to these specifications shall be so listed on a separate sheet headed “EXCEPTIONS TO THE SPECIFICATIONS”. Any proposal

submitted without exceptions will be required to meet every detail of these specifications regardless of cost to the successful vendor.

Where “NO EXCEPTIONS” are shown, none will be allowed. No exceptions will be considered that may tend to devalue the equipment or give an individual bidder who is offering a lesser item a distinct advantage.

4. Expenses in Preparation of Proposals

The City will not be responsible for, nor pay for, any expenses incurred by the Proposer in the preparation of the proposal. The costs for developing proposal submittals in response to the RFP are entirely the obligation of the Applicant and shall not be chargeable in any manner to the City.

5. Examining Documents

The Proposer is hereby advised that by signing the proposal form he/she is deemed to have studied and acknowledged all relevant documents and requirements contained herein.

6. Proposal Documents

Proposal documents may be obtained from the City of Yakima Purchasing Division at 129 No. 2nd Street, Yakima, Washington, 98901. Phone No. 509-575-6093, or by visiting the City’s Purchasing webpage at: www.yakimawa.gov/services/purchasing

7. Price Adjustments

Price adjustment requests will only be reviewed and negotiated during annual contract renewal.

B. TIME, PLACE, SUBMITTAL AND QUESTIONS

1. **A pre-proposal conference will be held at 2:00 PM on May 22nd, 2013 in the 2nd Floor Conference Room, located at Yakima City Hall, 129 North 2nd Street, Yakima, WA 98901. Attendance is not mandatory; however, Proposers are STRONGLY urged to attend.**
2. To be considered, sealed proposals must be received by mail or in person at the City Clerk’s Office, Yakima City Hall, 129 No. 2nd St., Yakima, WA. 98901 in a sealed envelope, not later than 2:00 p.m. Yakima time on May 30th, 2013. If you plan on attending the opening, do not bring the proposal with you into the opening room. It must be received and date stamped by the Clerk’s office.
3. The Proposer(s) should identify his proposal on the outside of the envelope by writing the words:
"Proposal No. 11319-P - Do Not Open -
Debt Collection Services
2:00 p.m., May 30th, 2013"
4. The proposer should include one (1) signed original and eight (8) copies of the proposal, plus an electronic copy on a CD or flash drive.

5. Purpose

The selected primary Sponsor shall provide services as specified in the RFP scope of work.

6. Definitions

6.1. City The City of Yakima, Washington, and its departments.

6.2. Proposer The person or firm submitting the proposal.

6.3. Contractor The person or firm awarded the contract.

6.4. RFP The Request for Proposals, including any amendments or other addenda hereto. In case of conflict between the RFP and exhibits, the RFP governs.

6.5. Evaluation Committee The RFP Evaluation Committee will score all responsive Proposals based upon the predetermined scoring matrix included herein, conduct interviews and negotiations if required, and make a Recommendation of Award to the City Manager.

6.6. Proposal The materials submitted by each Proposer in response to the RFP, including all attachments.

7. RFP Coordinator:

Questions regarding any aspect of the proposal documents shall be directed in writing to:

Colleen Bailey, CPPB
City of Yakima/Yakima County Buyer II
129 No. 2nd Street
Yakima, WA 98901
(509) 576-6787
Email: colleen.bailey@yakimawa.gov

8. Withdrawal/Supplement of Proposals

Applicants may withdraw or supplement their responses at any time prior to the response closing date and time. To accomplish this, a written request signed by an authorized representative of the applicant must be submitted to the RFP Coordinator.

9. Applicants' Questions

Any person contemplating submitting an RFP who is uncertain as to the intended meaning of any part of the RFP or other contract documents, or who finds discrepancies in, or omissions from the RFP may request interpretation, clarification, or correction of this RFP. Such request must be in writing and must be delivered to the RFP Coordinator by mail, e-mail, or hand delivery not later than five (5) calendar days before the deadline for delivery of RFP. The person submitting the request is responsible for its timely delivery. Any interpretation or correction of the RFP will be made only by written addendum and will be mailed or delivered to each person receiving this RFP, in addition to being posted on the City Purchasing webpage. Any information given to any applicant concerning the solicitation or any changes to the RFP shall be provided in writing to all

applicants to ensure that all applicants receive the same information relating to the RFP. The City will not be responsible for any other interpretation, clarification, or correction of this RFP.

Applicants must acknowledge receipt of any addenda on the Proposal Signature Form. Each applicant should verify that it has received all addenda to this RFP by direct inquiry to the City Contact Person before submitting proposals.

10. Proprietary Material Submitted

Any information contained in the RFP submitted that is proprietary must be clearly designated. Marking the entire bid as proprietary will be neither accepted nor honored. If a request is made to view an applicant's submittal, the City of Yakima will comply according to the Open Public Records Act, Chapter 42.17 RCW. If any information is marked as proprietary in the proposal, such information will not be made available until the affected applicant has been given an opportunity to seek a court injunction against the requested disclosure.

11. Public Disclosure

Proposals shall become the property of the City. All proposals shall be deemed a public record as defined in RCW 42.56 "Public Records." Any proposal containing language which copyrights the proposal, declares the entire proposal to be confidential, declares that the document is the exclusive property of the Applicant, or is any way contrary to state public disclosure laws or this RFP will be declared non responsive and removed from consideration. Any information in the proposal that the successful Applicant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56 must be clearly designated as described in Section Proprietary Information. The particular exception from disclosure upon which the Applicant is making the claim and the RFP page it is found on must be identified. RFP's will not be disclosed prior to release to potential respondents. With the exception of lists of prospective Applicants, the City will not disclose RFP records until execution of the contract(s). At that time, all information about the competitive procurement will be available with the exception of: Proprietary/confidential portion(s) of the successful proposal(s), until the Applicant has an adequate opportunity to seek a court order preventing disclosure. The City will consider a Applicant's request for exemption from disclosure; however, the City will make a decision predicated upon RCW 42.56.

12. Expansion Clause - Other City Departments/Like Items Added

At any time during the term of this contract, or any extension thereof, other City departments may be served under these same terms and conditions. Additional like items may be added at the request of the Purchasing Manager.

Any resultant contract may be further expanded by the Purchasing Manager in writing to include any other service normally offered by the vendor, as long as the price of such additional item is based on the same cost/profit formula as the listed item.

13. Protest Procedure

Any protest must be made in writing, signed by the protestor, and state that the Applicant is submitting a formal protest. The protest shall be filed with the City of Yakima's Purchasing Manager at 129 No. 2nd St., Yakima, WA 98901, faxed to 509-576-6394 or emailed to sue.ownby@yakimawa.gov. The protest shall clearly state the specific factual and legal ground(s) for the protest, and a description of the relief or corrective action being requested. Protests before award shall be filed five (5) days before the solicitation due date, and protests after the award shall be filed five (5) days after Award Announcement (see below for details). The following steps shall be taken in an attempt to resolve the protest with the Applicant:

Step I: Purchasing Manager and Division Manager of solicitation try resolving matter with protester. All available facts will be considered and the City Purchasing Manager shall issue a decision. This decision shall be delivered in writing to the protesting Applicant.

Step II: If unresolved, within three (3) business days after receipt, the protest may be appealed to the Department Head by the Purchasing Manager.

Step III: If still unresolved, within three (3) business days after receipt, the protest may be appealed to the City Manager (or his designee). The City Manager shall make a determination in writing to the Applicant.

Grounds for Protest

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination, conflict of interest;
- Solicitation unduly constrains competition or contains inadequate or improper criteria;
- Errors in computing score;
- Non-compliance with procedures described in the solicitation or City Policy.

Protest Determination

Each review and determination of the protest shall issue a decision that either:

Finds the protest lacking in merit and upholds the award; or

Finds only technical or harmless errors in the acquisition process and determines the City to be in substantial compliance and therefore reject the protest; or

Finds merit in the protest and provides options for correction, including, but not limited to, correcting the errors and re-evaluating the bids, reissuing the bid to begin a new process, or entering in to a contract that remedies the protest finding; or

Makes other findings and determines other courses of action as appropriate.

Timeframe

Only protests and complaints received within the required timeframe for protest action are accepted for consideration.

14. Award Announcement

Purchasing shall announce the successful bidder via City Website, e-mail, fax, regular mail, or by any other appropriate means. Once the announcement is released by Purchasing, the protest time frame begins. The timeframe is not based upon when the Applicant received the information, but rather when the announcement is issued by Purchasing. Though every effort will be made by purchasing to distribute the announcement to the interested Applicants, Purchasing is not responsible to assure that Applicants receive the announcement. It is the responsibility of the Applicants to obtain the announcement from Purchasing.

15. Award Regardless of Protest

When a written protest against making an award is received, the award shall not be made until the matter is resolved, unless the City determines that one of the following applies:
The supplies or services to be contracted for are urgently required;
Delivery or performance will be unduly delayed by failure to make award promptly;
A prompt award will otherwise be advantageous to the City.

If the award is made, the file must be documented to explain the basis for the award. Written notice of the decision to proceed shall be sent to the protester and others who may be concerned.

The City retains the right to enter into any contract and nothing herein shall be construed to limit that authority in any manner.

C. PROPOSAL CONTENTS:

Proposals shall include the following:

1. A written statement attesting that the firm will provide all required services to the City.
2. The signed and completed proposal signature form (Exhibit B), proposal price form (Exhibit A), Business Questionnaire (Exhibit C).
3. A history and description of the firm, when it was established, type of facility, location of main office and branches, size of staff employed, volume and diversification of current clients, volume and diversification of prior clients, and documentation certifying that the proposer is licensed to perform debt collection services within the State of Washington per RCW 19.16.500 (1) (a).
4. General, Court and NSF Check Collections (describe each separately) –
 - 4.1. Procedures for in-state debt collection efforts
 - 4.2. Procedures for out-of-state debt collection efforts
 - 4.3. Procedures for Canadian debt collection efforts
 - 4.4. Timeframe of debt collection activities
 - 4.5. Referral methods utilized
 - 4.6. Record maintenance
 - 4.7. Dispute resolution process

- 4.8. Procedures for obtaining civil judgments and garnishments
 - 4.9. Procedures for filing bankruptcy claims for dischargeable and non-dischargeable debts
 - 4.10. Credit bureau reporting
 - 4.11. Provide information to the success of your debt collection efforts utilizing these procedures.
5. Reports – Provide samples of reports currently in use that would be used to comply with the service specifications. Please provide any necessary documentation on how these reports would be modified, if necessary, to meet the needs of the City of Yakima as described in this RFP. Reports must be in a form acceptable to the City of Yakima.
6. Transition and Implementation Plan, Effective to Perspective Accounts
- 6.1. What is your transition plan, including timelines?
 - 6.2. Provide a detailed plan, describing how your organization proposes to meet the Specifications for Debt Collection Services.
 - 6.3. Describe your experience planning and implementing transitions from an existing debt collection system to a new debt collection system.
 - 6.4. What is your process for monitoring the transition schedule and how will you ensure that the established timeline is met?
7. Technology and Communication Capability – Provide a description of all systems utilized to perform the services described in this RFP document
- 7.1. Description of data and communication software and hardware
 - 7.2. Safeguards utilized to protect sensitive data
 - 7.3. Describe the software and hardware proposed to comply with the service specifications.
 - 7.4. Description of the plan for recovery from a major failure or disaster.
8. Literature, Brochures, etc.

D. SERVICE SPECIFICATIONS AND SCOPE OF WORK

1. Debt Collection Efforts

- 1.1. The City is customer service oriented and firmly believes in a positive approach in dealing with debtors. The Contractor shall not use tactics that may be interpreted as harassment or as demeaning or that may reflect poorly on the City. The City requires the Contractor to exercise high ethical standards in their debt collection philosophy and techniques. The Contractor shall conduct its debt collection business in a professional manner, which will preserve the dignity of the City and its relationship with its citizens.
- 1.2. Contractor will maintain an office within the Yakima area for performing the debt collection services required herein during the life of this Agreement.

- 1.3. Any phone solicitations to recover debt must be made between 8:00 am and 7:00 pm.
- 1.4. The Contractor shall meet with the City as requested.

2. Legal Requirements

- 2.1. The Contractor shall handle and process all accounts referred by the City, in strict conformity with all applicable Federal and Washington State laws, and any applicable laws the City may enact, including but not limited to:
 - 2.1.1. Washington State laws enacted or hereinafter amended governing collection agencies and practices, including but not limited to, Revised Code of Washington Title 19.36 governing prohibited practices, and titles 3.02 relating to use of credit agencies by public entities.
 - 2.1.2. Federal laws enacted or hereinafter amended governing collection agencies and practices, including but not limited to, the “Fair Debt Collection Practices Act” (15 USC 1692, et seq.), and all applicable laws and regulations of the United States Postal Service and the Federal Trade Commission.
 - 2.1.3. Contractor and City will be required to meet and review customer account prior to Contractor scheduling for legal action.

3. Confidentiality

The contractor shall maintain confidentiality of all documents and information provided by the City, except as to disclosure required by State and Federal laws and regulations. The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Contract, except upon the prior written consent of the City’s Legal Department, or an order entered by a court after having acquired jurisdiction over the City. Contractor shall immediately give to the City notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the City, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys’ fees and costs resulting from Contractor’s breach of this provision.

4. Records

4.1. Ownership of Items Produced:

The Contractor must maintain a complete, separate and detailed record of each account (using the City’s account, citation, or case number), including all debt collection actions taken for related transactions and communications, for a period of no less than six years after termination of the debt collection action or each account. The Contractor shall grant the City access to these records for inspection purposes during reasonable business hours for six years after termination of the debt collection contract.

- 4.2. The Contractor shall employ a Certified Public Accounting firm to perform an annual financial audit of the Contractor. A copy of the audit report and any management letters or auditor's comments relevant to the Contractor's fiscal/management practices affecting or having the potential to affect the performance of services described in this RFP and resulting contract shall be sent to the City's Finance Director on an annual basis for each year covered by the contract for services.
- 4.3. Upon five (5) calendar days notice, the City's Finance Director or his/her designee shall have the right to audit and/or inspect all of the records, documents, computer records, and other similar material controlled, maintained, and/or in the possession of Contractor pertaining to the debt collection services required under this Agreement.

5. Property Rights

All records or papers of any sort relating to the City and to the project will at all times be the property of the City and shall be surrendered to the City upon demand. All information concerning the City and said project, which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Contractor will not, in whole or part, now or at any time disclose that information without the express written consent of the City.

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection to the performance of this Contract shall be the sole and absolute property of the City of Yakima.

6. Work Made for Hire

All work the Contractor performs under this agreement shall be considered work made for hire, and shall be the property of the City. The City shall own any and all data, documents, plans, copyrights, specifications, working papers, reports, and any other materials the Contractor produces in connection with this agreement. On completion or termination of the agreement, the Contractor shall deliver these materials to the City project manager.

7. Types of Referrals

7.1. GENERAL ACCOUNTS

- 7.1.1. General Accounts shall mean fines, assessments, fees, penalties; past due accounts, or other amounts owed the City, *excluding* all accounts referred by the City of Yakima Municipal Court.
- 7.1.2. The Contractor shall accept referrals from the City only through the Finance Director or her designee for General Accounts. The Contractor shall not have full rights to the accounts and shall only be able to pursue debt collections on behalf of the City. The City shall provide copies of documentation as required by the Contractor to respond to debtors' requests. The City will make every effort to provide all pertinent information to the Contractor through the account referral data in a format approved by the City.

- 7.1.3.** City of Yakima may cancel an account at any time without any cost incurred by e-mailing or faxing a cancel and return form identifying specific names and numbers to the Contractor.
- 7.1.4.** The Contractor shall allow for time payment agreements and place this statement on all debt collection notices. The Finance Director shall set parameters in which the Contractor may accept a payment agreement. Alternative arrangements require the director's explicit permission.
- 7.1.5.** The Contractor shall not have authority to accept a compromise settlement on any account without written consent of the Finance Director for General Accounts. This consent may be accomplished by setting parameters in which the Contractor may accept a settlement.
- 7.1.6.** The Contractor shall file claims and represent the City in any bankruptcy for a General Account referred to the Contractor. On a monthly basis, the Contractor shall submit to the City Attorney a list of new bankruptcy claims filed. The Contractor shall notify the City Attorney or her designee of any notice or correspondence from the bankruptcy court or trustee.
- 7.2. NSF/Returned Checks (All Accounts)**
 - 7.2.1.** NSF/Returned checks means: "any check not honored and returned to the City for any reason, except "Stop Payment" checks." Check may be drawn on US or Canadian banks.
 - 7.2.2.** Currently, City NSF/returned check fees are \$40 US. This amount is subject to periodic change.
 - 7.2.3.** Contractor shall state in their proposal what their terms are for NSF checks.
 - 7.2.4.** NSF checks will be sent to Contractor at the sole discretion of the Finance Director
 - 7.2.5.** Within 15 days of receipt of a NSF/returned check, the Contractor shall provide any notices to the debtors that are required by law and/or necessary to collect the debt owed the City.
 - 7.2.6.** At the end of the 15-day period, at the sole discretion of the City, debt collection efforts on the NSF/returned check may be continued as a General Account collection item.
 - 7.2.7.** NSF checks for utility payments will be pursued by the City.

8. Debt Collection Fees/Costs

8.1. General Accounts

- 8.1.1.** For all General Accounts referred by the City, unless otherwise instructed by the Finance Director, the Contractor fee shall be added by the Contractor to the principal amount of the debt, collected by the Contractor from the debtor, and the City shall receive the first 90% of any funds collected until the General Account debt has been satisfied in full. The

contractor is then entitled to the remainder of the funds collected until their fee is paid.

8.1.2. Should there be changes in laws or City policy that allows a different method for recovering collection Contractor fees, the Contractor shall modify its methods accordingly, upon instruction from the Finance Director.

8.1.3. If an account is reduced or cancelled by the City, no collection fee will be due the Contractor for the amount so reduced or cancelled.

8.2. NSF/Returned Checks

8.2.1. For all NSF/Returned checks referred by the City, unless otherwise instructed by the Finance Director, the City's NSF/returned check fee and the principal amount shall be collected by the Contractor from the debtor, and the NSF fee retained by the Contractor prior to remitting the principal amount to the City.

9. Remittance

9.1. The Contractor shall, on the last day of each month, remit to the City for general accounts, monies collected for the City between the first (1st) and the fifteenth (15th) day of the same month. All monies collected for the City between the sixteenth (16th) and the last day of the month, shall be remitted on the fifteenth (15th) day of the following month.

9.2. If a partial payment is collected, the Contractor shall remit a pro-rata share to the City. For example, if the amount owed the City is \$100 and the collection fee is \$20 (total due of \$120) and \$90 is collected, the Contractor would remit \$75 to the City ($100/120 \times 90$) and would retain \$15 ($20/120 \times 90$).

9.3. If the Contractor receives payment from a debtor who owes money to other parties not related to the City, the Contractor shall pay the City first, unless specifically directed otherwise by the debtor.

10. Reporting

10.1. The Contractor shall have a comprehensive computerized system to report account status, collection statistics and other information as required by the City on a daily, monthly, quarterly, annual and other basis. Reports shall be received no more than 7 days after completion of the appropriate period. Provided below is the minimum reporting requirements, subject to change at the sole discretion of the Finance Director.

10.1.1. Quarterly Listing - The Contractor shall provide the City a quarterly listing by City department or type of debt collection account of all accounts assigned to Contractor. The report will state the following information: Identification of each account, date each account was assigned, client case number, status of each account, amount of each account placed for debt collection, payments and balance owing on each account.

- 10.1.2. Cash Activity Report** – Departments: This report tracks by departments, on a monthly and annual basis, the total dollars collected, fees collected, interest collected, and dollars remitted to the City.
- 10.1.3. Referral Report** – Departments: This report tracks by Yakima departments, on a monthly and annual basis, the number of accounts and dollars referred into active debt collection. In the case of the Court, quarterly reports to the Finance Director are required showing amounts assigned and amounts collected for both the current quarter and cumulatively by the second week after quarter end.
- 10.1.4. Monthly Transaction Journal** – Departments: This report tracks all postings to any City account by departments. Each posting tracks amounts allocated to principal, Contractor fees, interest, legal costs or fees and NSF checks.
- 10.1.5. Suit and Garnishment Report** – Departments: This report tracks new suits and garnishments requested during the month and all garnishments or legal fees paid in full during the month.
- 10.1.6. Aging Report** – Departments: This report tracks the current balance owing, amount collected on each account during the previous month, quarter and year-to-date, and the age of each account since referral by departments.
- 10.1.7. Client Index Report** – Departments: This report tracks the account status at the individual account level by departments. The report shall include the debtor's name, account number, date assigned, amount assigned, amount collected, balance, and account status.
- 10.1.8. Monthly Interest Remittance Report** – Departments: This report tracks by departments the amount of interest remitted for the previous month.
- 10.1.9. Account Acknowledgment** – Departments: This report is due within 3 days of receiving accounts for placement into active debt collection by departments. It shall include the detail for each batch of accounts referred, the name of the referring department, debtor's name, account number, total amount referred, total number of accounts and total dollars listed in the batch.
- 10.1.10. Monthly Cancellation Report** – This report tracks account status by departments. It shall include the debtor's name, account number, total dollars collected, dollars remitted to the City, Contractor fee collected, and remaining balance.
- 10.1.11. Monthly Bankruptcy Report** – This report tracks accounts that are in bankruptcy in Yakima Municipal Court. It shall include the debtor's name, account number, bankruptcy case number, total dollars collected, dollars remitted to the City, Contractor fee collected and remaining balance.
- 10.1.12. Quarterly Summary** – This report tracks total amounts turned over, total number of accounts, dollar amount canceled, and net collected.

11. Reporting to Credit Bureaus

The Contractor shall report all uncollected accounts to the major credit bureaus. Such reporting must be in accordance with all applicable Federal and Washington State laws including, but not limited to, the Fair Debt Collection Practices Act, Federal Equal Credit Opportunity Act, Regulations and the Consumer Credit Protection Act, as now in effect or hereafter amended. The Contractor shall not report accounts to the credit bureaus until the Contractor has worked the account for 60 days. At the request of the Finance Director, the Contractor shall remove an account notification from all affected bureaus and provide a copy of that notification to the Finance Director. In accordance with the Fair Credit Reporting Act, the City requires that accounts be cancelled from each credit bureau upon request of the Finance Director.

12. Disputed Accounts

The Contractor shall accept and process all written disputes in compliance with all Federal and State laws. The City will work with the Contractor to validate the debt.

13. Garnishments and Legal Suits

After all efforts of the debt collection process have been exhausted; the Contractor may garnish active accounts with judgments. For all accounts referred, the Contractor shall be responsible for initiating legal actions to reduce to judgment any debt owed to the City that is not already a judgment and for filing garnishments as necessary. No legal action shall commence on any account without written authorization from the Finance Director for General Accounts. Contractor and City will be required to audit customer account prior to scheduling for legal action.

14. Professional Service

Defense & Indemnity Agreement: The Contractor agrees to defend, indemnify and save harmless the City of Yakima, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City of Yakima, its elected or appointed officials or employees for damages, whether such damage is due to the negligence, or errors or omissions of the Contractor, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees, It is further provided that no liability shall attach to the City of Yakima by reason of entering into this Contract, except as expressly provided herein.

Professional Liability: The Contractor shall provide evidence of Professional Liability insurance covering professional errors and omissions. Such policy must provide the following minimum limits:

\$1,000,000 per Claim

If insurance is on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract.

15. Subcontractors

The Contractor may not assign or subcontract any portion of its contract with the City without the written consent of the Purchasing Manager. The services provided for herein shall be performed by the Contractor, and no person other than regular associates or employees of the Contractor shall be engaged upon such work or services except upon

written approval of the City. The Contractor and any authorized subcontractors shall at all times be an independent Contractor and not an agent or representative of the City with regard to performance of the Services. The Contractor shall not represent that it is, or hold itself out as, an agent or representative of the City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of the City.

E. EVALUATION CRITERIA

1. Selection Criteria & Scoring

The City of Yakima will evaluate all proposals that were received. The City reserves the right to reject any and all proposals in whole or in part and to waive irregularities not affecting a substantial right. An evaluation committee will evaluate and rank each proposal based on the following criteria. Proposals shall be reviewed on the information received in the written response. The decision of the committee shall be final and conclusive.

The following Evaluation criteria will be considered in evaluating a proposal:

1.1 Costs, including proposal amount, ongoing support, administrative, implementation and training costs. Cost of service.	30 points
1.2 References, demonstrations, documentation, working relations and dependability. The proven ability, stability, capacity, and skill of the Contractor to provide the service required for a multi-departmental government unit. Appropriate licensure by the State.	35 points
1.3 Training and implementation plan, technology and extra services. Simplicity and ease of adaptation with which the proposed debt collection procedures and practices meet with the specifications in this RFP. Access and use of technology systems to improve debt collection efforts and communication with the City of Yakima.	25 points
1.4 Responsiveness to the proposal. Completeness and thoroughness used to meet the specifications in this RFP	10 points
TOTAL	100 points

2. Clarification of Responses

As part of the evaluation process, and at the discretion of the City Purchasing/RFP Coordinator, applicants may be asked to clarify specific points in their respective responses. The City reserves the right to request oral interviews of applicants.

NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

2. That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

**TO BE TURNED IN
WITH PROPOSAL –
EXHIBIT “A”**

PROPOSAL PRICE FORM

PLEASE PROVIDE PRICING FOR THE FOLLOWING:			
Fees for Collection <u>per Account</u>			
Regular Collection		\$ _____	
NSF/Returned Checks		\$ _____	
Uncollectable Accounts		\$ _____	
Accounts Returned within 30 days		\$ _____	
Other Fees; specify type and amount:	UOM: _____		
		\$ _____	
		\$ _____	

**TO BE TURNED IN
WITH PROPOSAL –
EXHIBIT "B"**

PROPOSAL SIGNATURE FORM

Proposal of: _____

Address: _____

Date: _____

TO: The City of Yakima
 ("The City")

The undersigned hereby offers to enter into the Debt Collection Services Agreement, under the terms and conditions set forth in said agreement, in this Proposal Form and in the Instructions to Proposers, for a term of one (1) year, commencing on _____, 2013, with four (4) possible one (1) year contract extensions, for a total of five (5) years. Execution of this option shall be per the terms and conditions as set forth in the final agreement.

_____ has received, reviewed, and
agrees to Addenda (s) _____, _____ & _____.

Service shall start within _____ calendar days after contract signing.

Does your firm have a location/office/facility in Yakima? YES_____ NO_____.

The terms and conditions of this proposal are agreed to on this _____ day of the year 2013.

BY: _____

Printed Name (Officer)

SIGNATURE: _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

EMAIL: _____

PHONE: _____

FAX: _____

BUSINESS QUESTIONNAIRE

INSTRUCTIONS:

Proposer must present evidence that they are fully competent and have the necessary experience and financial resources to fulfill the conditions of the Debt Collection Services Agreement. To provide the City with information on these points, proposers must submit, as part of their proposals, information stipulated in this questionnaire.

Failure to submit this Business Questionnaire with all questions completely answered may disqualify the Proposer, in accordance with conditions stipulated in the "Instructions to Proposers." Proposers shall use separate sheets of paper for responses requiring more space than provided, however, the length for each response shall be limited to one side of one sheet per question.

Minimum Financial and Experience Requirements:

The Proposer submitting this proposal warrants that said Proposer has the following qualifications:

1. That the Proposer's business has been in continuous existence for a period of the past three (3) years, or more.
2. That the principal Proposer or its parent company can satisfy all requirements as noted under Proposal Contents Section (Page 9) of this package. Additional information should be attached to this Business Questionnaire as Addendum information.
3. Number of year's experience the Proposer making this proposal has in Debt Collection Services.

SERVICE PERFORMED AT:

YEARS OF EXPERIENCE

LIST 3 REFERENCES

4. Give the names and locations of places of the above mentioned agencies, together with the dates of operation (attach additional pages as necessary):

<u>Type of Operation:</u>	<u>Name:</u>	<u>Location:</u>	<u>Dates:</u>
-------------------------------	--------------	------------------	---------------

1. _____

Contact Name & Phone #: _____

2. _____

Contact Name & Phone #: _____

3. _____

Contact Name & Phone #: _____

5. Have any contracts for the operation of Debt Collection Services, etc., held by your organization ever been canceled?

☐ *Yes* ☐ *No*

If yes, explain in detail these circumstances on separate sheets of paper.

6. Bank References:

<u>Bank:</u>	<u>Address:</u>
--------------	-----------------

7. Proposer should list qualifications that enable Proposer to provide Debt Collection Services for the City of Yakima

**TO BE COMPLETED
AFTER AWARD –
EXHIBIT “D”**

**SAMPLE
A G R E E M E N T**

For:

DEBT COLLECTION SERVICES

for:

PROPOSAL NO. 11319-P

YAKIMA, WASHINGTON

DEBT COLLECTION SERVICES AGREEMENT

THIS DEBT COLLECTION SERVICES AGREEMENT, hereinafter "Agreement", is made and entered into by and between the City of Yakima, a Washington State municipal corporation, hereinafter the "City", and _____, hereinafter "CONTRACTOR".

WHEREAS, the City needs professional debt collection services to collect debts owed to the following City agencies: the City Utility Account Office, Animal Control and Parking Enforcement, Treasury, and Central Accounts, all of the Finance Department; Code Administration Division of the Community and Economic Development Department, and the Parks and Recreation Division of the Public Works Department.

WHEREAS, CONTRACTOR has experience and expertise regarding said debt collection services, and agrees to perform these services for the City under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises, and agreements set forth herein, it is agreed by and between the City and the CONTRACTOR as follows:

1. Definitions/Interpretation

For the purposes of this Contract and any additional instruments that may become a part of this Contract, the terms "contractor", "proposer", and "vendor" shall be interchangeable. The terms "buyer", "purchaser", "procuring agency", "Owner", "City of Yakima", and "City" shall be interchangeable.

2. Contract Documents

The City of Yakima Request For Proposals No. 11319-P and the Contractor's proposal (to the extent consistent with the City's documents) and any addenda are hereby incorporated herein by this reference. Specific federal and state laws and the terms of this Contract, in that order respectively, supersede other inconsistent provisions. This Contract is on file in the Purchasing Office, 129 No. 2nd St., Yakima, Washington, 98901.

3. Allocation and Assignment of Debts/Accounts by the City

The basis upon which debts/accounts are assigned by the City to CONTRACTOR for collection is strictly within the discretion of the City. Prior to assignment of a debt/account to CONTRACTOR for collection, the City shall attempt to advise the debtor of the existence of the debt/account, and that the debt/account may be assigned for debt collection if not paid.

4. Consideration

No fees will be charged to the City by CONTRACTOR to provide the debt collection services provided pursuant to this Agreement.

- a. Added Fee. When authorized by law, CONTRACTOR' fee will be added by the agency to the principal amount of the debt assigned to the agency and, on such accounts, CONTRACTOR shall not receive any fee in addition to the fee authorized to be charged to the debtor (RCW 19.16.500).
- c. Interest. Interest accrued on this account shall be shared on a 66.67/33.33 basis between the City and CONTRACTOR.
- d. Automated Check Verification No Charge
- e. NSF Check Collection _____
- f. Non-Collected Accounts. No fee will be charged for accounts not collected.
- g. Full and Best Efforts. CONTRACTOR will pursue full efforts to collect accounts, including skip-tracing.

CONTRACTOR has no authority to and will not engage in compromise settlement arrangements without written authorization from the City. The City shall have no responsibility for uncollected costs advanced by CONTRACTOR.

5. Term of Agreement

The period of this contract shall be for a period of one year from its effective date. The City may, at its option, extend the contract on a year to year basis for up to four additional years provided, however, that either party may at any time during the life of this contract, or any extension thereof, terminate this contract by giving thirty (30) days notice in writing to the other party of its intention to cancel. Contract extensions shall be automatic, and shall go into effect without written confirmation, unless the City provides advance written notice of the intention to not renew. Prices shall remain firm for the first twelve month period of the contract unless an exception is stated in the bid. Price adjustment requests will only be reviewed and negotiated during annual contract renewal. If no request is made for a price adjustment, the contract renewal at the existing compensation value shall be automatic.

6. License and Bonding Requirements

Contractor represents that it is licensed and bonded and shall remain as licensed and bonded during the term of this Agreement in accordance with and as required by RCW 19.16.110 and RCW 19.16.190 respectively. If applicable, successful Coordinator shall have a valid and current business license per Chapter 5.02 Section 5.02.010 of the Yakima Municipal Code covering this type of business and shall satisfy all applicable City Code provisions. Said license shall be obtained prior to the award of any contract. Inquiries as to fees, etc., should be made to the Office of Code Administration, telephone (509) 575-6121.

7. Status of CONTRACTOR

CONTRACTOR and the City understand and expressly agree that CONTRACTOR is an independent contractor in the performance of each and every part of this Agreement. CONTRACTOR and its officers, employees, agents, instructors, and subcontractors shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

8. Taxes and Assessments

CONTRACTOR shall be solely responsible for compensating its employees and for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, CONTRACTOR shall pay the same before it becomes due.

9. Non-Discrimination

During the performance of this Agreement, CONTRACTOR shall not discriminate in violation of applicable federal, state, and/or local law and/or regulation on the basis of race, age, color, sex, religion, national origin, creed, marital status, sexual orientation, political affiliation, or the presence of any sensory, mental or physical handicap. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of debt collection services under this Agreement.

10. The Americans With Disabilities Act: With regard to the services to be performed pursuant to this Agreement, Coordinator agrees to comply with the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (ADA) and its implementing regulations, and Washington State's anti-discrimination law as contained in RCW Chapter 49.60 and its implementing regulations. The ADA provides comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, state and local government services, and telecommunications.

11. Compliance With Law

CONTRACTOR agrees to perform all services under and pursuant to this Agreement in full compliance with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise.

12. No Insurance provided by City

It is understood the City does not maintain liability insurance for CONTRACTOR and/or its officers, employees, agents and/or subcontractors.

13. Professional Service

Defense & Indemnity Agreement: The Contractor agrees to defend, indemnify and save harmless the City of Yakima/Yakima County, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City of Yakima/Yakima County, its elected or appointed officials or employees for damages, whether such damage is due to the negligence, or errors or omissions of the Contractor, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees. It is further provided that no liability shall attach to the City of Yakima/Yakima County by reason of entering into this Contract, except as expressly provided herein.

Professional Liability: The Contractor shall provide evidence of Professional Liability insurance covering professional errors and omissions. Such policy must provide the following minimum limits:

\$1,000,000 per Claim

If insurance is on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract.

14. Assignment

This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by CONTRACTOR to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of CONTRACTOR as stated herein.

15. Severability

If any portion of the Agreement is changed per mutual agreement or any portion is held invalid, the remainder of the Agreement shall remain in full force and effect.

16. Integration and Supersession

This Agreement sets forth all of the terms, conditions, and agreements of the parties relative to the subject matter hereof and supersedes any and all such former agreements which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto, except as herein provided and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties.

17. Non-Waiver

The waiver by CONTRACTOR or the City of the breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party or prevent either party thereafter enforcing any such provision.

18. Termination

- A. Termination for Convenience. The City may terminate this Contract, in whole or in part, at any time by thirty (30) calendar days written notice to the Contractor. The Contractor shall be compensated in accordance with the terms of this Contract up to the effective date of termination. Upon termination the Contractor shall return all unresolved files, documents, and records previously provided to Contractor by the City to the City in the same form as they were provided.
- B. Termination for Default. If the Contractor fails to comply with any provision of this Contract, the City may terminate this Contract for default without notice. Termination for default shall be effected by delivering a notice of termination to the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be compensated for services performed in accordance with the manner of performance set forth in this Contract subject to setoff for damages caused to the City. If, after termination for default, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City. Upon termination the Contractor shall return all unresolved files, documents, and records previously provided to Contractor by the City to the City in the same form as they were provided.
- C. Opportunity to Cure. The City in its sole discretion may, in the case of termination for default, allow the Contractor thirty (30) days, in which to cure the defect of service. In such case, the notice of termination will state the nature of the default, the time period in which cure is permitted, and other appropriate conditions. If the Contractor fails to remedy to the City's satisfaction the default of any of the terms, covenants, or conditions of this Contract within the stated period of time for remedy, the City may terminate this Contract without any further obligation to the Contractor.
- D. Waiver of Remedies for any Breach. In the event the City elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by City shall not limit City's legal remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- E. Remedies. A termination for convenience or default shall not in any way operate to preclude the City from pursuing all other available legal remedies against the Contractor and its sureties for default or breach of this Contract.
- F. Contractor's Right to Terminate. The Contractor may terminate this Contract, in whole, for any reason upon thirty (30) calendar days written notice to the City.

19. Resolution Of Disputes Or Breaches

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the City of Yakima Purchasing Manager. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the

City Manager. In connection with said appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of this Contract while matters in dispute are being resolved. The final decision of the City Manager shall be binding upon the Contractor and the Contractor shall abide by the decision. The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

20. Survival

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this agreement and shall be binding on the parties to this Agreement.

21. Notices

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To City:

Colleen Bailey
Buyer I
Yakima City Hall
129 North Second Street
Yakima, WA 98901

To Service Provider:

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

22. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

23. Venue

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of the Agreement, the venue of such action of litigation shall be in the Courts of the State of Washington in and for the City of Yakima. This Agreement shall be governed by the laws of the State of Washington.

24. Contract Execution:

CITY OF YAKIMA

SERVICE PROVIDER

By: _____
City Manager

Date: _____

By: _____

Date: _____

ATTEST:

City Clerk

**FEDERAL TRANSIT ADMINISTRATION
3RD PARTY CONTRACT CLAUSES
FOR CITY OF YAKIMA**

A.1 - Federally Required and Other Model Contract Clauses

1. ~~Fly America Requirements~~ SELECTION DELETED
2. ~~Buy America Requirements~~ SELECTION DELETED
3. ~~Charter Bus and School Bus Requirements~~ SELECTION DELETED
4. ~~Cargo Preference Requirements~~ SELECTION DELETED
5. ~~Seismic Safety Requirements~~ SELECTION DELETED
6. **Energy Conservation Requirements**
7. ~~Clean Water Requirements~~ SELECTION DELETED
8. ~~Bus Testing~~ SELECTION DELETED
9. ~~Pre Award and Post Delivery Audit Requirements~~ SELECTION DELETED
10. **Lobbying**
11. **Access to Records and Reports**
12. **Federal Changes**
13. ~~Bonding Requirements~~ SELECTION DELETED
14. ~~Clean Air~~ SELECTION DELETED
15. ~~Recycled Products~~ SELECTION DELETED
16. ~~Davis Bacon and Copeland Anti-Kickback Acts~~ SELECTION DELETED
17. ~~Contract Work Hours and Safety Standards Act~~ SELECTION DELETED
18. [Reserved]
19. **No Government Obligation to Third Parties**
20. **Program Fraud and False or Fraudulent Statements and Related Acts**
21. **Termination**
22. **Government-wide Debarment and Suspension (Nonprocurement)**
23. **Privacy Act**
24. **Civil Rights Requirements**
25. ~~Breaches and Dispute Resolution~~ SELECTION DELETED
26. **Patent and Rights in Data**
27. ~~Transit Employee Protective Agreements~~ SELECTION DELETED
28. **Disadvantaged Business Enterprises (DBE)**
29. [Reserved]
30. **Incorporation of Federal Transit Administration (FTA) Terms**
31. **Drug and Alcohol Testing**

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

10. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under

grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of

the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<u>II Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES **49 CFR Part 18**

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

**31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307**

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil

Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1E

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out

costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will

only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the

time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience or Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work

schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by {insert agency name}. If it is later determined that the bidder or proposer

knowingly rendered an erroneous certification, in addition to remedies available to {insert agency name}, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401 49 CFR Parts 18 and 19

Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Model Clause/Language

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business

Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is __ %. A separate contract goal **[of __ % DBE participation has] [has not]** been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (*see* 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS **FTA Circular 4220.1E**

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING **49 U.S.C. §5331** **49 CFR Parts 653 and 654**

Applicability to Contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Model Clause/Language

Introduction

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the

regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

Drug and Alcohol Testing Option 1

The contractor agrees to:

(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.

Drug and Alcohol Testing Option 2

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Drug and Alcohol Testing Option 3

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).